

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1360

Dante Coal Company v. Jones

BLACK LUNG BENEFITS. Whether ALJ complied with this Court's instructions on remand and whether ALJ impermissibly retroactively applied amended regulations; other issues. 15 mins. per side

04-2454

Modeba v. Gonzales

IMMIGRATION. Whether the Board abused its discretion in denying the motion to reopen.

05-1104

Steven M. Scott v. National Century Fin
(Blake)

BANKRUPTCY. Challenge to preliminary injunction and sanctions against debtor's former principal for interfering in reorganization process.

04-2046

Heiko v. Colombo Savings Bank
(Titus)

ADA. Challenge to summary judgment on claim of disability discrimination based on kidney disease.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

TUESDAY, OCTOBER 25, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-20

Conaway v. Polk
(Beaty)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

04-5035 (L), 04-5129

US v. Anthony McQueen
(Hilton)

CRIMINAL. Whether defendant should have been sentenced as an armed career offender; search and seizure; sufficiency.

03-4601 (L), 03-4610

US v. Kenneth A. Campbell
(Blatt)

SENTENCING GUIDELINES. Whether appellants' sentencing ranges were plain error in light of United States v. Booker, 125 S. Ct. 738 (2005).
30 mins. per side

05-1175

Stephen W. Kendrick v. Henry County
(Kiser)

PUBLIC EMPLOYMENT. Challenge to dismissal and partial summary judgment in action alleging termination with public service authority for exercising protected First Amendment rights.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

TUESDAY, OCTOBER 25, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-1068

Doe v. Chao
(Williams)

PRIVACY ACT. Challenge to award of attorney's fees to a
claimant who failed to obtain monetary damages.

05-6423

McKinney v. Richland Cnty Sherif
(Seymour)

CIVIL RIGHTS. Denial of qualified immunity to public school
teacher in action alleging assault and battery on a
student.

05-1015

Black & Decker Corp v. US
(Quarles)

TAX. Whether corporate taxpayer suffered a capital loss for
federal tax purposes on the sale of stock.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

TUESDAY, OCTOBER 25, 2005

REVD 10/21/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2493

Carefirst of MD Inc v. First Care, P.C.
(Doumar)

TRADEMARK. Whether doctors' office use of "First Care" name is likely to cause confusion with insurance company's "CareFirst" trademark.

04-2486

Knox v. US Dept of Labor

CLEAN AIR ACT. Challenge to dismissal of retaliation claim based on petitioner's complaints about workplace asbestos exposure.

05-1387

Ruggerio v. US
(Quarles)

REAL PROPERTY. Whether federal tax liens attached to condominium before purchase by third party.

04-2354

Warch v. Ohio Casualty Ins
(Bennett)

AGE DISCRIMINATION. Whether plaintiff established prima facie case under ADEA.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

TUESDAY, OCTOBER 25, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-29

Vinson v. True
(Spencer)

HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.

04-1157

Manufactured Housing v. EPA

ADMINISTRATIVE AGENCY. Challenge to EPA's policy on submetered properties.

04-2456

Brewer v. Secretary of Navy
(Lee)

CIVIL. Whether transfer from permanent to temporary position constitutes adverse employment action; other issues.

05-1168

Byrd v. Canadian Imperial
(Duffy)

ERISA. Challenge to denial of benefits; attorney's fees.

PANEL I
COURTROOM ONE
Courthouse Room 412 (Red Carpet)
9:30 a.m.

WEDNESDAY, OCTOBER 26, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-5004

US v. Alphonso Gilbert
(Turk)

CRIMINAL LAW. Whether there exists an affirmative defense of innocent, transitory possession to a charge of felon in possession of a firearm under 18 U.S.C. ss 922 (g).

04-1963

Johnson v. Barnhart, Comm
(Goodwin)

SOCIAL SECURITY. Whether appropriate weight was given to treating medical doctor's opinion in evaluating social security disability claim; other issues.
15 mins. per side

04-2292

Jean v. Gonzales

IMMIGRATION. Whether the Court retains jurisdiction to review denial of petitioner's request to reopen or reconsider a previous denial of cancellation of removal and an INA Section 212(h) waiver in light of the REAL ID Act of 2005.

04-2411

Emery v. Roanoke City School
(Turk)

EDUCATION. Whether IDEA claim is time barred.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:30 a.m.

WEDNESDAY, OCTOBER 26, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-2279

Partington v. American Intl Specia
(Bullock)

FEDERAL JURISDICTION. Challenge to dismissal of action to
enforce default judgment.

04-2254

Nibagwire v. Gonzales

IMMIGRATION. Whether petitioner's evidence was sufficient
to rebut presumption of receipt of notice of removal
hearing sent by regular mail, warranting grant of motion to
reopen removal proceedings held in absentia.

05-1025

Horne v. Reznick Fedder
(Quarles)

TITLE VII. Whether district court correctly granted summary
judgment to employer.

04-2004

Federal Insurance v. Ward
(Moon)

INSURANCE. Whether defendants were acting in the scope of
their employment at the time of a fire.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
9:30 a.m.

WEDNESDAY, OCTOBER 26, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1933

RMS Titanic Inc v. Wrecked and Abandon
(Smith)

ADMIRALTY. Whether the Court has jurisdiction over
interlocutory appeal of order declining to enforce foreign
maritime official's order; other issues.

03-1658 (L), 04-1637

Horner v. Dept of Mental Hlth
(Turk)

JURISDICTION. Preclusive effect of state action where
appellant prevailed; other issues.

05-1077

Toll Bros., Inc. v. Dryvit Systems Inc
(Britt)

TORTS. Challenge to summary judgment in action alleging
defectively designed artificial stucco; spoliation.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
9:30 a.m.

WEDNESDAY, OCTOBER 26, 2005

REVD 9/19/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

04-19
Walton v. Johnson
(Wilson)

04-2132
Laber v. Harvey
(Lee)

NATURE OF CASE

Rehearing En Banc.

Rehearing En Banc.

COURTROOM TWO
Courthouse Room 233 (Green Carpet)
9:00 a.m.

THURSDAY, OCTOBER 27, 2005

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

03-4422

US v. Lloyd A. Williams
(Thornburg)

SENTENCING. Whether a federal prisoner's delay in
successfully reducing previous state drug offenses renders
him ineligible to challenge the enhancement of his federal
sentence under the Armed Career Criminal Act.
15 mins. per side

04-5020 (L), 04-5021

US v. James David Nichols
(Mullen)

SENTENCING. Whether district court properly excluded at
sentencing a confession previously suppressed.

04-4555

US v. Jeffrey R. Wilinski
(Messitte)

CRIMINAL LAW & PROCEDURE. Challenge to special condition of
supervised release that defendant's mental health provider
authorize any lawsuit against certain entity.

04-4415

US v. Joseph Belyea
(Brinkema)

CRIMINAL LAW & PROCEDURE. Whether district court erred by
applying per se rule excluding expert testimony; denying
motion for new trial; Booker issues.

PANEL I

COURTROOM ONE

Courthouse Room 412 (Red Carpet)

** 8:00 a.m. **

FRIDAY, OCTOBER 28, 2005

REVD 10/27/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

05-4274

US v. Synina Lavel Clark
(Brinkema)

SENTENCING. Challenge to downward departure from the advisory federal guideline range based on sentence defendant would have received in state court for similar offenses.
15 mins. per side

04-4571

US v. Ronald Shamblin, II
(Goodwin)

SENTENCING GUIDELINES. Whether, in light of United States v. Booker, 125 S. Ct. 738 (2005), the district court erred in imposing sentence; whether resentencing implicates Ex Post Facto Clause.

04-4995

US v. Antonio Harvey
(Howard)

CRIMINAL LAW & PROCEDURE. Whether indictment was constructively amended; whether failure to give public authority jury instruction was structural error; other issues.

PANEL II
COURTROOM TWO
Courthouse Room 233 (Green Carpet)
8:30 a.m.

FRIDAY, OCTOBER 28, 2005

REVD 10/27/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

04-4283
US v. Mark Cohn
(Davis)

NATURE OF CASE

CRIMINAL PROCEDURE. Timeliness of notice of appeal after
denial of four motions for new trial under Fed. R. Crim. P.
33; other issues.

PANEL III
COURTROOM THREE
Courthouse Room 225 (Tan Carpet)
** 8:00 a.m. **

FRIDAY, OCTOBER 28, 2005

REVD 10/12/05

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
Richmond, Virginia
(10/25/2005 - 10/28/2005 Session)

NUMBER AND STYLE

NATURE OF CASE

04-1633

DeJulius v. Microsoft Corp
(Motz)

ANTITRUST. Challenge to district court's class certification decision; challenge to dismissal of foreign purchaser's claims.

05-4143

US v. Nicolas Montejo
(Doumar)

CRIMINAL LAW & PROCEDURE. Whether aggravated identity theft statute requires proof defendant knew identification transferred, used, or possessed was in fact "a means of identity of another person."

05-4270

US v. Charles Aaron Green
(Legg)

SENTENCING. Whether defendant should have been sentenced as a career offender due to two prior felony drug convictions. 15 mins. per side

04-4662

US v. Essam Helmi El Shami
(Hudson)

CRIMINAL LAW & PROCEDURE. Whether admission at trial of withdrawn plea agreement was based on knowing and intelligent waiver; sufficiency of evidence; other issues.

PANEL IV
COURTROOM FOUR
Courthouse Room 414-D (Tweed Carpet)
8:30 a.m.

FRIDAY, OCTOBER 28, 2005

REVD 10/12/05